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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,124	07/12/2001	DuWayne C. Radke	56908US002	1697

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EXAMINER

GREEN, CHRISTY MARIE

ART UNIT PAPER NUMBER

3635

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/904,124

Applicant(s)

RADKE ET AL.

Examiner

Christy M Green

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 10-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 7, 10, 15, 16, 18 and 19 is/are rejected.
- 7) ☒ Claim(s) 5, 11-14, 17 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☒ Other: attached figure 3.

DETAILED ACTION

This is a third office action for the RCE filed for serial number 09/904124, entitled Pass-Through Fire Stop Device, originally filed on July 12, 2001.

Response to Appeal Brief

In response to the applicants appeal brief filed 2/28/05, the brief has been entered and considered. The application has been further evaluated, and an action is as follows. The applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 10, 15-16, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Munzenberger et al., US patent # 6,161,893 in view of McIlroy, US Patent 3,995,888.

Munzenberger discloses the claimed invention including a firestop device (figure 2) comprising a housing (7), firestop material (11) arranged within the housing; the housing comprising a base portion (3) and a riser portion (7), the base portion including a recess (where 11 points to); the base portion includes a sidewall portion (where 3 points to) extending from a first open end (10) towards the riser portion (7); the sidewall (3) and shoulder (2) portions include inner surfaces having a rib (15); the housing has a

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first and second opposed open ends (10 and the opposite side of 10) and a hollow chamber (where 12 is located) having a longitudinal axis extending from the first open end to the second open end (figure 2); the first open end (10) is provided in the base portion (where 3 points to) and the second open end is provided in the riser portion (7), the firestop material (11) being provided in spaced relation (by 13) along the sidewall portion inner surface from the first open end to the shoulder portion (figure 2); the housing has a two-tiered cylindrical shape (figure 2) the base portion (3) having a larger diameter than the riser portion (7); the base portion further includes a flange (4) adjacent the first open end (10); the riser portion (7) includes a plurality of equally segmented transverse bands (8) each including manually engageable pull tab (where 8 points to); a cap (9) attached to the riser portion (7); the cap contains snap connectors (see attached figure 2) that snap onto the riser portion; a retaining ring (4) arranged within the base portion first open end adjacent the firestop material.

Munzenberger does not disclose the housing including at least one frangible connection defining a removable band. McIlroy teaches that it is known in the art to provide at least one frangible connection (16a) defining a removable band (at 16 – figure 1); and a pull tab (interpreted to be in attached figure 3) providing a grasping means. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the frangible connection of the housing and the pull tab to grasp the band of McIlroy with the housing of the firestop device of Munzenberger in order to provide an easy breaking off end portion which allows for different lengths of the pipes (column 3, lines 29-34).

Allowable Subject Matter

Claims 5, 11-14, 17 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments with respect to claims 1-7 and 10-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christy M Green whose telephone number is 571.272.6844. The examiner can normally be reached on M,T 10:30-4:00, Th 10:30-8:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571.272.6842. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Yvonne M. Horton


Cg

May 19, 2005

